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No. 80-1814

In the Supreme Court of the United States

October Term, 1980

CITY OF CINCINNATI,
Petitioner,

vs.

ALAN R. JONES, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENTS IN OPPOSITION

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those Constitutional and Statutory Provisions stated at page 2 of the Petition for a Writ of Certiorari, Respondents consider pertinent the following:

Rules of the Court of Common Pleas, Hamilton County, Ohio, eff. March, 1976, Rule 6:

> "(A) The Cincinnati Court Index is hereby designated as the official daily law journal of this Court, as required by Revised Code Section 2701.09, in which the individual calendars of the judges of this Court

shall be published, which calendars shall contain the numbers and titles of cases, and the individual names of the trial attorneys appearing therein as defined by Superintendence Rule 3 and Rule 10 of these Rules. The calendars shall also contain the motions dockets and such particulars and notices respecting causes, as may be specified by the judges of this Court, and each notice required to be published by any of such judges.

"(B) In accordance with the individual assignment system required by Superintendence Rule 4, separate calendars for each judge of each division of this Court shall be published.

"(C) Publication in the Cincinnati Court Index shall be deemed official and complete notification to all Hamilton County counsel of any assignment or setting of any case for any purpose whatever and it shall be the duty of such counsel to ascertain from the Cincinnati Court Index any official notification contained therein pertaining to all cases.

"(D) Where mail notification is provided by these rules or is otherwise given, nondelivery of such mail notification shall not excuse the nonappearance of Hamilton County counsel where such notice has also been given by publication in the Cincinnati Court Index as provided by the paragraph above.

"(E) Notwithstanding provisions of any rule to the contrary, any mail notification provided for shall be sufficient if it specifically directs the attention of counsel to the official notification in the Cincinnati Court Index without particularly setting forth any specific case style or number or exact time of hearing."

STATEMENT OF THE CASE

Respondents consider the following amplification of the Statement of the Case, as contained at page 5 of the Petition for a Writ of Certiorari to be appropriate:

Reference to the Judgment Entry and Memorandum Opinion entered by the Trial Court on October 26, 1979, was published in the Cincinnati Court Index Press, the official daily law journal of the Hamilton County Common Pleas Court, on October 27, 1979, in the following form:

JUDGE RILEY

Friday, October 26.

A-7608395 Jones vs. City of Cinti. Entry.
A-7608395 Same vs. Same. Memorandum Opinion.

ARGUMENT

1. Due Process of Law Does Not Require the Rendering of Actual Notice to the Parties and Counsel of a Judgment Entry and Memorandum Opinion.

The essence of Petitioner's assertion of denial of due process appears to be the absence of any *actual* notice of the journalization by the Trial Court of its own Judgment Entry and Memorandum Opinion within such time as was required to perfect an appeal under Rule 4(A) of the Ohio Rules of Appellate Procedure. Petitioner cites *American Surety Company v. Baldwin*, 287 U.S. 156, 168 (1932) and *Mullane v. Central Hanover Bank & Trust Co., et al.*, 339 U.S. 306 (1950) in support of this proposition. However, in neither *American Surety Company, supra*, nor *Mullane, supra*, does it appear that notice by

publication in the Court's official daily law journal or a newspaper of general circulation was consummated the day following journalization of the Court's entry and decision. In the case *sub judice* it is clear that, pursuant to Hamilton County Common Pleas Court, Local Rule 6 and Local Rule 17, publication in the Cincinnati Court Index of the Trial Court's Judgment Entry and Memorandum Opinion was made the day following journalization of the Court's Entry and that this constituted "notice" to the parties of the Court's action. Clearly, if due process required *actual* notice of the journalization of a Judgment Entry from which an appeal might be taken, in order for the time for perfecting an appeal to commence, there would be virtually no finality to litigation. We submit that the Fourteenth Amendment and Due Process of Law provisions therein do not require actual notice of a judgment entry within the time for perfecting an appeal therefrom, but simply that there be some reasonable means of providing the parties with constructive notice of the Court's decision within such time as would entitle the parties to appeal if such is sought. The publication in the Cincinnati Court Index Press, Hamilton County Common Pleas Court's official daily law journal, of the Entry and Memorandum Opinion journalized by the Court one day after the journalization thereof is adequate notice to the parties so as to comport with due process requirements, and is a reasonable means of furnishing constructive if not actual notice to the litigants so that the rights of appeal may be pursued if appropriate.

Although the specific nature of the Trial Court's deviation from the Local Rules of Practice is not clear in the Petition for a Writ of Certiorari, the suggestion is made that the Trial Court failed "to follow the local rules of the court" ("QUESTIONS PRESENTED" Question No. 2 in Petition for a Writ of Certiorari). The Trial Court

clearly indicated in its Memorandum Opinion an intention to place the Court's own Entry of record on the same date as the Memorandum Opinion was journalized ("The Court will place its own entry of record this date." A10 of Petition for a Writ of Certiorari). Clearly, Local Rule 17 of the Hamilton County Rules of Practice affords the Trial Court with discretion to journalize the Court's own Entry, stating that "Unless the Court otherwise directs . . ." the Entry shall be prepared by counsel for the prevailing party, and that "If such entry is not prepared and presented for journalization by counsel then it shall be prepared and journalized by the Court." In any case, clearly the identity of the preparer of the judgment entry is immaterial, since the central issue in Petitioner's Writ for Certiorari is the claimed denial of due process by reason of having no *actual* notice of the journalization of the entry within such time as to perfect an appeal. As mentioned above, notification of the journalization of the Court's entry was constructively afforded all counsel and parties via publication in the Cincinnati Court Index Press of the fact of journalization of Entry and Memorandum Opinion one day following the actual journalization thereof by the Court.

Petitioner suggests that the Trial Court's decision "became 'appeal proof' by the Court failing to provide any communication or notice to either party or their attorneys in this action." (Page 9 of Petition.) However, it is quite clear that the Trial Court in fact did communicate notice of its decision and entry in accordance with Local Rule 17:

> "Notice of the filing of each journal entry for the journalization shall on the following day of such filing be published in the Cincinnati Court Index . . ."

It is difficult to perceive an "appeal-proof" decision when notification of journalization thereof is published in the official daily law journal of the Court which, by Local

Rule 6, shall be deemed official and complete notification to all Hamilton County counsel

> ". . . for any purpose whatever and it shall be the duty of such counsel to ascertain from the Cincinnati Court Index any official notification contained therein pertaining to all cases. . ."

on the day following journalization by the Court of the Judgment Entry and Memorandum Opinion and when there remained twenty-nine (29) days for the filing of a Notice of Appeal therefrom in order for Petitioners to obtain Appellate review thereof.

CONCLUSION

Petitioners have not been deprived of any Constitutional rights or remedies by virtue of the publication of journalization of the Court's Judgment Entry and Memorandum Opinion in the official daily law journal of the Court on the day following journalization thereof and there is no requirement under the Fourteenth Amendment that *actual* notice of the Court's journalization of its own Entry be afforded to the parties. If *actual* notice to all parties were required in order to commence the time for the filing of an appeal there would be virtually a limitless time in which appeals could be taken in those situations where mail is lost, misdelivered, or misaddressed, and the appellant claims lack of notice which cannot be rebutted by appellee. A far more practical means of affording notice to the parties is through the Court's official daily law journal, a newspaper which is readily available to all practicing attorneys in Hamilton County, Ohio, so that an appeal may be perfected within the time constraints of Rule 4(A) of the Ohio Rules of Appellate Procedure. The fact that the parties inadvertently overlooked such notification and as a

result were unable to perfect an appeal within the time specified in Rule 4(A) of the Ohio Rules of Appellate Practice is indeed regrettable, but cannot constitute the basis for a claim of Constitutional infringement.

Respectfully submitted,

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